

In the Matter of the Joint Application of)
)
Axia NetMedia Corporation, Transferor)
Axia NGNetworks USA, Inc., Licensee)
)
and)
)
Axia NGNetworks Trust, Transferee)
FSM Management, LLC, Operating Trustee)
)
Application for Authorization Pursuant to)
Section 214 of the Communications Act of)
1934, As Amended, for Transfer of Control of)
Axia NGNetworks USA, Inc., an authorized)
Domestic Section 214 Carrier, to Axia)
NGNetworks Trust)

**MASSACHUSETTS TECHNOLOGY PARK CORPORATION'S
REPLY IN SUPPORT OF PETITION FOR RECONSIDERATION**

ARGUMENT

The Joint Opp. puts the shoe on the wrong foot by disparaging MTC as “a contract counterparty” and “litigation adversary” that “flouts” FCC rules, and supposedly seeks relief that would be “contrary to the public interest,” to achieve “leverage” in litigation. *Id.* at 1-2. In reality, it is Axia that has violated FCC rules requiring candor in submissions, and is seeking leverage over MTC, contrary to the public interest, by going behind MTC’s back to seek approval for the transfer

Axia NGNetworks USA, Inc. (“Axia US”) into an asset-less Trust that can then be liquidated whenever its limited loan from Axia runs out, instead of performing in full under its *Master Agreement for Network Operator Services* with MTC (the “Agreement”), the term of which extends out to 2023, and the full performance of which is critical to Massachusetts.

It is one thing for the FCC to take the understandable position that it will not become involved in commercial disputes unless a violation of its rules is shown. It is quite another for it to be asked, as the Joint Opp. essentially does, to allow applicants to knowingly conceal material information critical to the application, and then argue that nothing can be done about it. That is what is happening here, and it should not be permitted, particularly where the July 29 Order of the WTB is not yet final, as MTC’s Petition was timely filed, and the Commission can certainly grant Axia an appropriate period of time to address the concerns raised by MTC.

I. AXIA VIOLATED FCC RULES BY FAILING TO DISCLOSE MATERIAL INFORMATION TO THE COMMISSION IN ITS APPLICATION

The Joint Opp. does not dispute that Axia did not disclose, in its June 22, 2016 *Joint Application for Domestic Transfer of Control* to the Commission in this case (the “June 22 Application”), that it had not sought the prior written consent of MTC to the proposed transfer, even though the record shows that Axia knew it was required to do so under its *Master Agreement for Network Operator Services* with MTC (the “Agreement”). Instead, Axia attempts to justify the failure by misrepresenting to the Commission, in the Joint Opp., that “[t]he Master Agreement has no term requiring Axia U.S. to notify MTC when entering into a transfer of control.” Axia Opp. at 3, n.2. The record clearly shows, however, that this statement is untrue, and that Axia knows it is untrue.

Specifically, on April 25, 2016, Cameron Barrett, then Vice-President of Axia FiberNet (one of the many Axia affiliates that has dealt with MTC), emailed a letter with attachments

directly to the Interim Director of MTC, Elizabeth Copeland, describing a then-proposed acquisition not of Axia US, but of its parent Axia NetMedia Corporation, by an affiliate of Partners Group Holding AG. In that letter, dated April 25, 2016, Axia expressly stated:

As a follow-up to our communication of March 9, 2016, please see below some additional updates on the status of the proposed acquisition (the “Acquisition”) of Axia NetMedia Corporation (“Axia”) by an affiliate (the “Purchaser”) of Partners Group Holding AG (“Partners Group”)

As the Acquisition may constitute a change of control for the purposes of Section 8.1.4 of the Master Agreement for Network Operator Services (the “Agreement”) between Axia NGNetworks USA, Inc. and Massachusetts Technology Park Corporation (“MTPC”), **we are seeking MTPC’s prior written consent in accordance with Section 8.1.4 of the Agreement.** Our proposed form of consent is enclosed”

Exh. A hereto, at p. 2 (emphasis added). Clearly, Axia knew then, and knows now, that seeking such “prior” consent **is** and was required under the Agreement (which even has the usual provision stating that MTC’s consent “shall not be withheld unreasonably”). *Id.* Thus, Axia’s representations to the contrary in the Axia Opp., and the representations in its prior application for approval of the transfer of Axia US into a Trust that the proposed transfer was proper and in compliance with all applicable requirements, even though it knew it had not followed this required process with MTC, a major public agency whose Network it was operating, violated Section 1.17 of the FCC’s Rules, 47 CFR Section 1.17.¹

In response to Axia’s April 25, 2016 request for “prior written consent,” which included Axia’s April 5, 2016 Joint Application for a proposed transfer of control of Axia NetMedia Corporation to a Partners affiliate called Digital, MTC had explained to Axia, in a letter sent to Axia on April 28, 2016, that it needed to know:

¹ See 47 CFR Section 1.17 (“Truthful and accurate statements to the Commission”) provides, *inter alia*, that: ... no person subject to this rule shall ... (1) ... intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; ...”).

... [w]hether and how, as part of the proposed acquisition, the assets of Axia NetMedia will be sufficiently preserved (a) to assure its ability to fully perform its obligations to MassTech under its existing Guaranty of the obligations of Axia under the Agreement, and (b) to assure its and Axia's continued ability to comply with the outstanding Preliminary Injunction and related Orders issued by the Massachusetts Superior Court against Axia in the civil action entitled *Massachusetts Technology Park Corporation d/b/a Massachusetts Technology Collaborative d/b/a Axia NGNetworks USA, Inc.*, Civil Action No. 14-2410-BLS 2;

Exh. B hereto. MTC was still awaiting a response to that request for information from Axia, having inquired about it several times, when it was suddenly advised by Axia NetMedia's Chairman and Chief Executive, for the first time, on July 29, 2016, that a *different* transfer of control – to which it had never been asked to give its prior consent under the Agreement, and to which it had never even been given prior notice – *had already occurred*, supposedly in order to meet the regulatory requirements of the FCC. MTC promptly responded by objecting to Axia's failure to comply with the requirements in the Agreement relating to such a transfer, and by filing this Petition.

Clearly, Axia intended to deceive MTC and give it no opportunity to address, either with the FCC or otherwise, the issues arising out of its proposed transfer of MTC's Network operator Axia US into a trust. It deliberately forwarded its prior FCC filing to MTC, along with a request for MTC's prior written consent to that proposed transfer, and then, after it received requests for information from MTC that highlighted the importance of ensuring that any transfer not interfere with the ability of the Network operator to comply with the outstanding Court injunction, it proceeded to file with the FCC for approval of an entirely different type of transfer – without informing the FCC of MTC's concerns or the issues it raised, or of the fact that Axia was violating its Agreement with MTC by failing to seek its prior written consent to the transfer that the FCC was being asked to approve. This was a plain violation of FCC rules, and made a mockery of the

process. Under these circumstances, reconsideration of the July 29 Order, and a fair opportunity for MTC to participate in these proceedings before the WCB, is warranted.

II. THE CIRCUMSTANCES OF THIS CASE WARRANT THE UNUSUAL RELIEF OF RECONSIDERATION OF THE JULY 29 ORDER

MTC is aware of the FCC's general unwillingness to intervene in private contractual disputes, but more than that is involved here. Moreover, Detroit Cellular Telephone Company, 2 FCC Rcd 420 (MSD 1987), and cases which cite it,² do, contrary to Axia's statement to the contrary (Axia Opp., p.5), note the existence of a possible, if rarely invoked, exception to that doctrine, which can be applied in the event of a showing of a violation of the Commission's Rules or a federal statute.

In this regard, Section 1.17 (a)(1) of the FCC's Rules, 47 C.F.R. § 1.17 (a)(1), cited above, requires "person[s] subject to the rule" not to omit "material information" which if omitted, would make factual statements submitted to the Commission "incorrect or misleading" Section 1.65 of the Commission's Rules, 47 C.F.R. § 1.65, imposes on FCC's "applicants" a duty of maintaining "the accuracy and completeness of information furnished in a pending application." Section 1.65 is closely linked with the requirement of "candor" with the FCC in countless FCC orders.

In this unique context, Axia's inconsistent action in notifying MTC in advance with respect to the then-pending Partners Group acquisition of Axia US's parent company Axia NetMedia Corporation on April 25, 2016, and seeking MTC's prior written consent at that time, reveals its knowledge that it had a duty to seek MTC's prior consent to the proposed acquisition of MTC's Network operator Axia US by a Trust two months later – especially after receiving MTC's April 28, 2016 request for information and assurances about then-proposed Axia NetMedia transfer of control (which it ignored). Axia's obviously intentional decision not to seek such prior consent

² See, e.g., Loral Satellite, Inc., 19 FCC Rcd 2404, 37 (IB 2004).

from MTC with regard to the second proposed transfer (into an asset-less Trust), and its omission to notify the FCC that it had not properly sought that consent, and that MTC, a public agency, had previously raised serious concerns about a transfer of control of Axia US that it had not yet answered, clearly violated its duty to advise the FCC of material facts concerning the instant application. And the issue was a critical one.

MTC currently provides internet service to thousands of customers through the Network, and Axia US's continued performance of all its obligations under the Agreement for the full term of the Agreement (which extends to 2023) is critical to the future of the Network, which was built in underserved rural areas of Massachusetts with federal funds disbursed pursuant to The American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009), and is crucial to economic development in that area. Any attempt by Axia NetMedia to transfer Axia US and its license to a Trust that could allow it to withdraw from its obligations under the Network Operator Agreement would have a severe adverse effect on the Commonwealth of Massachusetts, and would be contrary to the public interest.

In this case, it is obvious that Axia knew that MTC would raise its concern with the FCC if it properly sought MTC's prior written consent to the proposed transfer of Axia US into an empty Trust – so it intentionally omitted to disclose that requirement, or MTC's likely response to it, in its filings with the FCC, and made it appear that the proposed transfer was merely routine. This was a violation of both the letter and the spirit of the FCC's rule of candor. As the D.C. Circuit pointed out in *Schoenbohm v. FCC*, 204 F.3d 243, 247 (D.C. Cir. 2000):

Commission regulations forbid applicants from “mak[ing] any misrepresentation or willful material omission bearing on any matter....” 47 C.F.R. § 1.17; see also 47 U.S.C. § 312(a)(1). A licensee's **complete candor** is important to the FCC because “effective regulation is premised upon the agency's ability to depend upon the representations made to it by

its licensees.” *Leflore Broad. Co. v. FCC*, 636 F.2d 454, 461 (D.C.Cir.1980); see also *Character Policy*, 5 F.C.C.R. at 3253.

(emphasis added). In short, Axia made a conscious decision not to disclose information that would have made a difference the FCC’s consideration of its application, and would have prompted MTC to make its concerns known to the FCC. The entire purpose of the candor rule is to prevent this kind of willful evasion of an issue from happening. Where it occurs, reconsideration of a previously issued Order is warranted.

III. MTC’s CONCERNS REGARDING THE PROPOSED TRANSFER OF AXIA US INTO AN ASSET-LESS TRUST ARE NOT “GROUNDLESS”

The Joint Opp. argues that MTC’s concerns about the transfer of Axia US into an asset-less trust are “groundless,” but Axia’s aforesaid intentional decision not to comply with its obligation to seek MTC’s prior written consent to the transfer (having already acknowledged in writing, two months earlier, that the Agreement required it to do so), and its conscious decision not to disclose this decision, and MTC’s prior expression of concern, to the FCC as part of its application, show that the concern is obviously not groundless.

Similarly, Axia’s prior actions in attempting to renege on its obligations under the Agreement, resulting in a Massachusetts court having to issue a preliminary injunction attached to MTC’s Petition herein, also show that the concern is not groundless. Finally, Axia own application for transfer, in emphasizing that the Trustee of the proposed transferree Trust has been given the authority to sell the assets of stock of Axia US in whatever manner the Trustee deems appropriate, *see* Application at 5-6, shows that the concern is not groundless, and that in fact Axia is contemplating such a dissolution once the proceeds of its limited loan are used up.

Clearly, this is not a transfer that should be permitted without adequate assurances that the Trust into which the stock of Axia US is proposed to be transferred has adequate resources to sustain its operation of the Network for the full term of the Agreement

IV. THE LIMITED RELIEF THAT MTC IS REQUESTING WOULD NOT HAVE ANY “ADVERSE EFFECT” ON THE PUBLIC INTEREST

The argument in the Joint Opp. that granting MTC any relief here “would be harmful to the public interest,” *see* Joint Opp. at 8-11, is incorrect. The July 29 Order of the WTB is not yet final, as MTC’s Petition was timely filed, and the FCC can certainly retroactively condition its order on Axia ensuring that Axia US fulfill its obligations under the Agreement for its full term, which extends until 2013, and grant Axia an appropriate period address this problem, whether it be to arrange a transfer to something other than an asset-less Trust that could operate the Network for only a short time before its loan ran out, or provide legally binding assurance that any transferee will have the assets necessary to continue to perform Axia’s obligations under the Agreement for its full term.

In this regard, the limited relief that MTC is requesting is clearly in the public interest, as its only concern is ensuring that Axia US continues to perform all its obligations under the Agreement, and operate MTC’s MBI123 Network in Western Massachusetts, for the full term of that Agreement. Significantly, Axia has thus far been unwilling to provide those assurances, which, along with its aforesaid conduct in avoiding the issue, speaks volumes as to its motives and intentions.

CONCLUSION

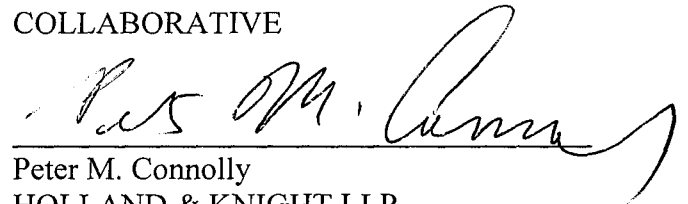
In summary, MTC did not file a Petition to Deny during the comment period because it was misled into relying on Axia NetMedia’s prior representations to MTC that it was applying for a transfer of control between Axia NetMedia and Digital Connection (Canada) Corp., an affiliate

of Partners, not attempting to transfer Axia US to a Trust whose sole trustee is an investment advisory firm with no apparent assets sufficient to do so apart from limited financial support directly from a foreign-controlled entity, and authorization from that entity to liquidate the Network Operator. In attempting the latter, Axia knowingly withheld material information from the FCC that was necessary to make its application not misleading. These facts warrant reconsideration of the WCB's Order of July 29, and the granting of reasonable relief to MTC.

Based on the foregoing, MTC respectfully renews its request that the Commission grant this Petition, reconsider its order granting the Applicants' domestic Section 214 application, and set aside, dismiss or return the application, or retroactively condition or amend it as requested above.

Respectfully submitted,

MASSACHUSETTS TECHNOLOGY
PARK CORPORATION d/b/a
MASSACHUSETTS TECHNOLOGY
COLLABORATIVE



Peter M. Connolly
HOLLAND & KNIGHT LLP
80017th Street, N.W.
Washington, D.C. 20006
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Robert J. Kaler
Edwin L. Hall
HOLLAND & KNIGHT LLP
10 St. James Ave.
Boston, MA 02116
(617) 523-2700

*Counsel for Massachusetts Technology Park
Corporation d/b/a Massachusetts
Technology Collaborative*

Dated: September 13, 2016

Exhibit A

From: Cameron Barrett [<mailto:Cameron.Barrett@axia.com>]
Sent: Monday, April 25, 2016 1:16 PM
To: Elizabeth Copeland <copeland@masstech.org>
Cc: Dave Charbonneau <charbonneau@masstech.org>
Subject: Axia NGNetworks USA, Inc. - Master Agreement for Network Operator Services

Elizabeth,

Further to our recent communication regarding the proposed acquisition (**Acquisition**) of Axia NetMedia Corporation, I have attached a cover letter, which provides an update on the status of the Acquisition, and the related reference documents listed below:

- Application to the Federal Communications Commission for authorization for the transfer of control of Axia NGNetworks USA, Inc.; and
- Form of consent to the change of control.

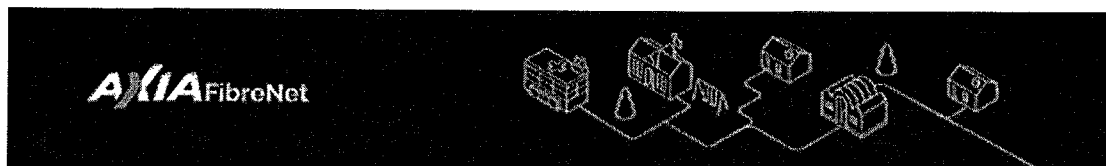
If I could request that you please return to me an executed copy of the consent form by Friday, April 29th. Should you have any questions regarding the above, please feel free to contact me directly.

Sincerely,

Cameron

Cameron Barrett
Vice President Carrier MBA, MSc (Law)

C 403.830.4007 / cameron.barrett@axia.com
3300, 450 1st Street SW Calgary, AB T2P 5H1
AxiaFibreNet.com / [LinkedIn](#) / [Twitter](#)



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3300, 450 1st Street S W.
Calgary, AB T2P 5H1

April 25, 2016

Ms. Elizabeth Copeland
Interim MBI Director
Massachusetts Technology Collaborative
75 North Drive
Westborough, MA 01581

Dear Elizabeth:

Re: Axia NGNetworks USA, Inc. – Master Agreement for Network Operator Services

As a follow up to our communication of March 9, 2016, please see below some additional updates on the status of the proposed acquisition (the "**Acquisition**") of Axia NetMedia Corporation ("**Axia**") by an affiliate (the "**Purchaser**") of Partners Group Holding AG ("**Partners Group**");

- Axia has now prepared and mailed a Management Information Circular ("**MIC**") to its shareholders. The MIC describes the Acquisition in detail and I am enclosing a copy for your reference;
- Axia is seeking shareholder approval for the Acquisition at a meeting of its shareholders to be held on May 6, 2016;
- Axia and the Purchaser have jointly applied to the Federal Communications Commission for authorization for transfer of control of Axia NGNetworks USA, Inc. (copy attached for your reference); and
- Axia and Partners Group intend to close the Acquisition as soon as practicable following the receipt of shareholder approval on May 6, 2016.

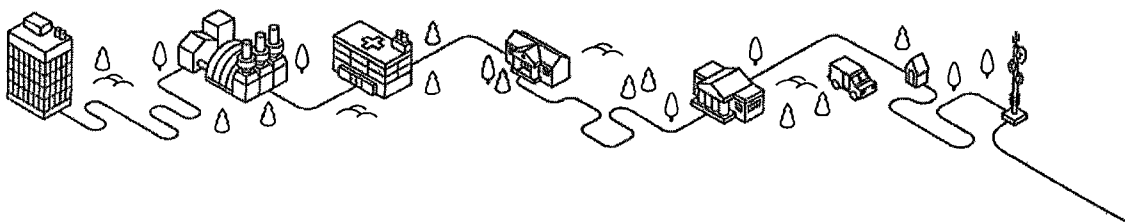
As the Acquisition may constitute a change of control for the purposes of Section 8.1.4 of the Master Agreement for Network Operator Services (the "**Agreement**") between Axia NGNetworks USA, Inc. and Massachusetts Technology Park Corporation ("**MTPC**"), we are seeking MTPC's prior written consent in accordance with Section 8.1.4 of the Agreement. Our proposed form of consent is enclosed for your consideration.

I appreciate your timely attention to this matter. Please feel free to contact me with any questions you may have.

Best Regards,

A handwritten signature in black ink, appearing to read "C Barrett".

Cameron Barrett
Vice-President, Carrier



**MASSACHUSETTS TECHNOLOGY PARK CORPORATION
d/b/a MASSACHUSETTS TECHNOLOGY COLLABORATIVE**

_____, 2016

Axia NGNetworks USA, Inc.
c/o Axia NetMedia Corporation
3300, 450 – 1st Street SW
Calgary, Alberta T2P 5H1

Attention: Cameron Barrett
 Vice-President, Carrier

Dear Sir:

Re: Axia NGNetworks USA, Inc. – Consent to Change of Control

This consent letter is being provided pursuant to Section 8.1.4 of the Master Agreement for Network Operator Services between Axia NGNetworks USA, Inc., as network operator (the "**Network Operator**"), and Massachusetts Technology Park Corporation, doing business as Massachusetts Technology Collaborative ("**MTC**") (as amended, modified, supplemented, restated or replaced from time to time, the "**Master Agreement**").

In accordance with Section 8.1.4 of the Master Agreement, MTC hereby consents to the change of control of the Network Operator that may result from the acquisition by Digital Connection (Canada) Corp. ("**Digital Connection**") of the issued and outstanding shares of Axia NetMedia Corporation (the parent company of the Network Operator) ("**Axia**") pursuant to the arrangement agreement dated March 9, 2016 between Digital Connection and Axia.

Yours truly,

**MASSACHUSETTS TECHNOLOGY PARK CORPORATION
d/b/a MASSACHUSETTS TECHNOLOGY COLLABORATIVE**

Per: _____
 Name:
 Title:

GEORGE M. FOOTE
Partner
(202) 442.3518
Foote.george@dorsey.com

April 5, 2016

By Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Joint Application for Authorization Pursuant to Section 214 of the Communications Act of 1934, As Amended, for Transfer of Control of Axia NGNetworks USA, Inc., an authorized Domestic Section 214 Carrier to Digital Connection (Canada) Corp.

Dear Ms. Dortch:

Transmitted herewith is a Joint Application for the transfer of control of the domestic Section 214 authorization of Axia NGNetworks USA, Inc. from Axia NetMedia Corporation to Digital Connection (Canada) Corp. The filing and applicable credit card payment are being submitted electronically through ECFS.

Should any questions arise with regard to this matter, please communicate directly with this office as attorneys for Axia NGNetworks USA, Inc. and Axia NetMedia Corporation and with Robert Seidel or Sydney White as attorneys for Digital Connection (Canada) Corp.

Respectfully submitted,



George M. Foote, Dorsey & Whitney LLP
Kristin K. Berkland, Dorsey & Whitney, LLP
Samir M. Islam, Dorsey & Whitney LLP

***Attorneys for Axia NetMedia Corporation and
Axia NGNetworks USA, Inc.***

Robert Seidel, QC
DLA Piper (Canada) LLP
1000, 250 – 2nd Street S.W.
Calgary, Alberta T2P 0C1

Ms. Marlene H. Dortch
April 5, 2016
Page 2

Sydney M. White
DLA Piper LLP (US)
500 8th Street NW
Washington, DC 20004
202.799.4452

Attorneys for Digital Connection (Canada) Corp.

cc: Jodie May, FCC Wireline Competition Bureau
Adrienne McNeil, FCC International Bureau
Arthur Price, Chairman and CEO, Axia NetMedia Corporation
Esther Peiner, Digital Connection (Canada) Corp.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of the Joint Application of)	
)	
Axia NetMedia Corporation, Transferor)	
Axia NGNetworks USA, Inc., Licensee)	
)	
and)	
)	
Digital Connection (Canada) Corp.,)	
Transferee)	WC Docket No _____
)	
Application for Authorization Pursuant to)	
Section 214 of the Communications Act of 1934,)	
As Amended, for Transfer of Control of)	
Axia NGNetworks USA, Inc., an authorized)	
Domestic Section 214 Carrier, to Digital)	
Connection (Canada) Corp.)	

JOINT APPLICATION FOR DOMESTIC TRANSFER OF CONTROL

I. Introduction

Axia NetMedia Corporation (“Axia Canada” or “Transferor”), Axia NGNetworks USA, Inc.¹ (“Axia U.S.” or “Licensee”), and Digital Connection (Canada) Corp. (“DCC” or “Transferee”) (collectively “Applicants”) through their undersigned counsel and pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and Section 63.04 of the rules of the Federal Communications Commission (“FCC” or the “Commission”), 47 C.F.R. §63.04, hereby respectfully request Commission approval or such authority as may be necessary or required to enable the parties to consummate a transaction where DCC will acquire control of Axia U.S., a non-dominant carrier holding blanket domestic Section 214 authority from the Commission to provide interstate telecommunications services.

Axia U.S. is a Delaware based corporation whose ultimate parent, Axia Canada, is a Canadian publicly listed company. In the proposed transaction, DCC will purchase the shares of Axia Canada and take control of all Axia Canada-related subsidiaries, including Axia U.S. As a result, the proposed transaction will result in a change of the ultimate ownership of the Licensee, Axia U.S. No transfer of authorizations, assets, or customers will occur as an immediate consequence of the proposed transaction. Instead, Axia U.S. will continue to provide uninterrupted

¹ Axia NGNetworks USA, Inc.’s FCC Federal Registration Number is 002-255-8662.

service to existing customers pursuant to its authorizations under the same rates, terms, and conditions as currently apply.

II. Information Required for Filing a Domestic Transfer of Control Application

Pursuant to 47 C.F.R. § 63.04(a) and in support of this Application, Applicants provide the following information:

1. Name, Address, and Telephone Number of Each Applicant, 47 C.F.R. § 63.04(a)(1).

Transferor

Axia NetMedia Corporation
450 1st Street S.W., Suite 3300
Calgary, Alberta T2P 5H1
Telephone: +1-403-538-4000

Licensee

Axia NGNetworks USA, Inc.
One International Place
100 Oliver Street, Suite 1400
Boston, MA 02110
Telephone: +1-617-535-7530

Transferee

Digital Connection (Canada) Corp.
c/o Partners Group
Zugerstrasse 57
6341 Baar-Zug
Switzerland
Telephone: +41 41 784 67 20

2. Government, State, or Territory under the Laws of Which Each Corporate Applicant is Organized, 47 C.F.R. § 63.04(a)(2)

Transferor: Axia Canada is a publicly traded corporation existing under the laws of the Province of Alberta, Canada.

Licensee: Axia U.S. is a corporation formed under the laws of Delaware.

Transferee: DCC is a corporation existing under the laws of the Province of Alberta, Canada.

3. Name, Title, Address, and Telephone Number of Officer or Contact Point to whom Correspondence Regarding the Application should be Addressed, 47 C.F.R. § 63.04(a)(3)

For Transferor and Licensee:

Notice to: Arthur Price, Chairman and Chief Executive Officer
Axia NetMedia Corporation
450 1st Street S.W., Suite 3300
Calgary, Alberta T2P 5H1
Email: art.price@axia.com
Telephone: +1 403-538-4001

With Copy to: George M. Foote
Dorsey & Whitney LLP
1801 K Street, NW, Suite 750
Washington, D.C. 20006
Email: foote.george@dorsey.com
Telephone: +1 202-442-3518

For Transferee:

Notice to: Esther Peiner
Digital Connection (Canada) Corp.
Zugerstrasse 57
66341 Baar-Zug
Switzerland
Email: esther.peiner@partnersgroup.com
Telephone: +41 41 784 67 20

With Copy to: Robert Seidel, QC
DLA Piper (Canada) LLP
1000, 250 – 2nd Street S.W.
Calgary, Alberta T2P 0C1
Email: robert.seidel@dlapiper.com
Telephone: +1 403-296-4470

4. The Name, Address, Citizenship, and Principal Businesses of any Person or Entity that Directly or Indirectly owns at least 10% of the Equity of the Applicant, and the Percentage of Equity Owned by each of those Entities (to the nearest 1%), 47 C.F.R. § 63.04(a)(4)

• **Pre- and Post-Transaction Ownership of Transferor:**

- The following entities currently hold a ten percent (10%) or greater direct or indirect interest in Axia Canada:

Ancora Advisors LLC ("Ancora")
6060 Parkland Boulevard, Suite 200
Cleveland, Ohio 44124 USA

Ancora is a registered investment advisory firm formed under the laws of Nevada. Investment funds managed by Ancora own in aggregate approximately 11% of the issued and outstanding shares of Axia Canada. In its capacity as investment manager of these funds, Ancora exercises control or direction over such shares.

Based on information obtained from Canadian public regulatory filings, the remaining approximately 89% of the issued and outstanding shares of Axia Canada are publicly held, with no entity holding a 10% or greater direct or indirect interest.

- The following entities will hold a ten percent (10%) or greater direct or indirect interest in Axia Canada upon completion of the transaction:

Upon completion of the transaction, Axia Canada will be wholly owned by DCC, which in turn is wholly owned by Digital Connection (Luxembourg) S.a.r.l. ("DC Luxembourg"), which in turn is owned by fifteen (15) entities. Partners Group Holding AG ("PG Holding"), a Swiss private investment firm, will indirectly hold control of DCC through DC Luxembourg. PG Holding is traded publicly on the SIX Swiss Exchange. Approximately 45% of PG Holding's shares are owned by its employees and partners, and no owners would have a ten percent or greater interest in DCC. PG Holding controls the fifteen (15) entities that own DC Luxembourg. Only three of the entities hold a ten percent (10%) or greater indirect interest in DCC, and in turn, will hold a ten percent (10%) or greater indirect interest in Axia Canada, as follows:

Name of Entity and Percentage of Interest Held in DC Luxembourg

Partners Group Direct Infrastructure 2015 (USD), LP Inc.	20.80%
BVK Direct Infrastructure 2014, LP Inc.	16.30%
Partners Group Global Infrastructure 2012, LP Inc.	13.10%

Pre- and Post-Transaction Ownership of Licensee:

- The following entities currently hold a ten percent (10%) or greater direct or indirect interest in Axia U.S.:

Axia Canada owns 100% of the issued and outstanding common stock of Axia U.S.

- The following entities will hold a ten percent (10%) or greater direct or indirect interest in Axia U.S. upon completion of the transaction:

Axia U.S. will be wholly owned by DCC, which in turn is wholly owned by DC Luxembourg, which in turn is owned by fifteen (15) entities. Three of the entities hold a ten percent (10%) or greater indirect interest in DCC, and in turn, will hold a ten percent (10%) or greater indirect interest in Axia U.S. as follows:

Name of Entity and Percentage of Interest Held in DC Luxembourg

Partners Group Direct Infrastructure 2015 (USD), LP Inc. 20.80%

BVK Direct Infrastructure 2014, LP Inc. 16.30%

Partners Group Global Infrastructure 2012, LP Inc. 13.10%

Pre- and Post-Transaction Ownership of Transferee:

- The following entities currently hold a ten percent (10%) or greater direct interest in DCC:

- DCC is wholly owned by DC Luxembourg

- The following entities will hold a ten percent (10%) or greater direct or indirect interest in DCC upon completion of the transaction:

- Upon completion of the transaction, DCC will be wholly owned by DC Luxembourg, which in turn is owned by funds indirectly controlled by the Swiss investment firm PG Holding. Only the funds listed below hold a 10-percent or greater direct or indirect economic interest in DC Luxembourg. Although the equity of those funds is held by third parties none of which hold a 10 percent or greater direct or indirect interest, PG Holdings holds voting control for any shares or member interests held by each of the funds comprising 100% voting interest in DC Luxembourg. The funds include:

1. BVK Direct Infrastructure 2014, L.P.

Address: c/o P.O. Box 477, Tudor House, Le Bordage, St Peter Port, Guernsey GY1

Citizenship: Guernsey

Principal business: investments in infrastructure globally

Relationship client of Partners Group Holding AG, direct ownership interest of 16.3% in DC Luxembourg

- 2 **Partners Group Infrastructure 2012, L.P. Inc.**
Address c/o P O Box 477, Tudor House, Le Bordage, St Peter Port, Guernsey GY1
Citizenship Guernsey
Principal business investments in infrastructure globally
Relationship fund pooling clients of Partners Group Holding AG direct ownership interest of 13.1% in DC Luxembourg
- 3 **Partners Group Direct Infrastructure 2015 (USD), L.P. Inc.**
Address c/o P O Box 477 Tudor House, Le Bordage, St Peter Port, Guernsey GY1
Citizenship Guernsey
Principal business investments in infrastructure globally
Relationship fund pooling clients of Partners Group Holding AG, direct ownership interest of 20.8% in DC Luxembourg
- 4 **Axia Netmedia Corporation Canada**
Address 450 1st Street S W , Suite 3300, Calgary, Alberta T2P 5H1
Citizenship Canada
Principal business design, build and operating fiber networks
Relationship this entity will be delisted from the Toronto Stock Exchange and coming under new ownership of DCC as part of this Transaction It controls 100% of Axia NGNetworks USA INC
- 5 **Partners Group Management XII Limited (PG Management XII)**
Address P O Box 477, Tudor House, Le Bordage, St Peter Port, Guernsey GY1
Citizenship Guernsey
Principal business investments
Relationship PG Management XII is the general partner of BVK Direct Infrastructure 2014, L P Inc , giving it a 16.3% indirect voting interest in DC Luxembourg
- 6 **Partners Group Management IX Limited (PG Management IX)**
Address P O Box 477, Tudor House, Le Bordage, St Peter Port, Guernsey GY1
Citizenship Guernsey
Relationship PG Management IX is the general partner of Partners Group Infrastructure 2012, L P Inc , giving it a 13.1% indirect voting interest in DC Luxembourg
- 7 **Partners Group Management VII Limited (PG Management VII)**
Address P O Box 477, Tudor House, Le Bordage, St Peter Port, Guernsey GY1
Citizenship Guernsey
Principal business investments
Relationship PG Management VII is the general partner of Partners Group Direct Infrastructure 2015 (USD), L P Inc , giving it a 20.8% indirect voting interest in DC Luxembourg
- 8 **Partners Group Holding AG**
Address Zugerstrasse 57, 6341 Baar, Switzerland
Citizenship Switzerland
Principal business investments
Relationship owns 100% of PG Management XII, owns 99.9% of PG Management IX, owns 99% of PG Management VII

- A pre and post transaction DCC corporate structure chart is attached as **Exhibit B**.
- PG Holding's shares trade publicly on the SIX Swiss Exchange. As there is an active market in PG Holding's shares, PG Holding's share ownership is always fluid. Moreover, PG Holding can ascertain its significant shareholders only on the basis of its records and may not know of possibly related or affiliated shareholders that are not disclosed to it. Recognizing these limitations, as of December 31, 2015, PG Holding has no owners that would hold a 10-percent or-greater direct or indirect interest in DC Luxembourg. Approximately 45 percent of PG Holding's shares are owned by its employees and partners.

5. Certification that no Party to the Application is Subject to a Denial of Federal Benefits Pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853, 47 C.F.R. § 63.04(a)(5)

None of the parties are subject to a denial of federal benefits under Section 5301 of the Anti-Drug Abuse Act of 1988. *See* 21 U.S.C. § 853a; 47 C.F.R. §§ 1.2001-1.2003.

6. Description of the Transaction, 47 C.F.R. § 63.04(a)(6)

Pursuant to an Arrangement Agreement dated March 9, 2016 and executed between DCC and Axia Canada, DCC will acquire all of the issued and outstanding common shares of the authorized share capital of Axia Canada. As a result of the transaction, DCC will directly own and control Axia Canada, will become Axia Canada's ultimate owner, and will take control of Axia Canada's subsidiaries, including Axia U.S. For the Commission's convenience, a chart of the pre- and post-transaction corporate structures of the Applicants are attached as **Exhibits A and B**. Upon completion of the transaction, Axia U.S. will be indirectly wholly owned by DCC.

7. Description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area, 47 C.F.R. § 63.04 (a)(7)

Transferor/Licensee:

Through a Master Agreement for Network Services ("Master Agreement") Axia U.S., a wholly owned subsidiary of Axia Canada, operates a next generation network ("MTC Network") on behalf of the Massachusetts Technology Park Corporation² in Western Massachusetts under the name of MassBroadband 123 ("MB123"). MB123 includes about 2,200 km of fiber backhaul infrastructure and electronics connecting more than 120 communities. In its role as Network Operator, and subject to MTC oversight, Axia is responsible for all aspects of the management,

² Massachusetts Technology Park Corporation is an independent public instrumentality of the Commonwealth of Massachusetts established, organized, and existing pursuant to Chapter 40J of the Massachusetts General Laws and doing business as the Massachusetts Technology Collaborative, together with its successors and assigns, ("MTC").

sales, billing, staffing, monitoring, operations, customer support, and maintenance of the MTC Network. Axia U.S. offers wholesale broadband services, including the transmission component of wireline broadband Internet access services, over the MB123 network to broadband service providers, government, and small and medium-sized businesses in Western Massachusetts. Axia U.S. also offers lit and dark fiber services over the MB123 network. Although Axia U.S. has the ability to establish and publish a pricing schedule for wholesale and other services, it is subject to contractual price caps and other restrictions imposed by MTC, and all pricing is subject to MTC approval. Any customer contracts or written MTC Network policies and procedures also require MTC approval. In exchange for its services as a Network Operator, Axia U.S. receives revenue from the sales, provisioning, support, and fees paid for use of the MTC Network. Axia U.S. operates under blanket domestic Section 214 authority pursuant to 47 C.F.R. § 63.01.

Pursuant to the Master Agreement, Axia U.S. has the right to fund and own its own network extensions serving its own independent customers. However, to date, Axia U.S. has not created, funded, or provided telecommunications services over its own independent network extensions.

Axia Canada, through subsidiaries and other investment vehicles, sells fiber optic communications network services to government, commercial, and retail service provider customers in Alberta, Canada, and France. Neither Axia Canada, nor its subsidiaries and other investment vehicles, provide international telecommunications services (i.e., services that originate in the U.S. and terminate in a foreign point; terminate in the U.S. and originate in a foreign point; or originate and terminate in a foreign point but transit the United States). As a result, no International Section 214 authorization is needed.

Transferee:

The Transferee does not provide telecommunications services in the United States. However, funds controlled by subsidiaries of Partners Group Holding AG in aggregate have majority control in Seabras 1 USA, LLC ("Seabras 1 USA," FRN 0025202300). Seabras 1 USA has filed an Application for License to Land and Operate a Private Fiber-Optic Submarine Cable System Connecting Brazil to New Jersey (File No. SCL-LIC-20160115-00002). Seabras 1 USA intends to commence commercial operation of the cable system in the second calendar quarter of 2017.

8. A Statement Regarding how the Application fits into one or more Presumptive Streamlined Categories, 47 C.F.R. § 63.04(a)(8)

The Applicants do not request streamlined treatment.

9. Identification of all other Commission Applications related to the same Transaction, 47 C.F.R. § 63.04(a)(9)

There are no other applications related to this transaction pending with the Commission. However, as discussed under Question 7 above, Seabras 1 USA has filed an Application for License to Land and Operate a Private Fiber-Optic Submarine Cable System Connecting Brazil to New Jersey (File No. SCL-LIC-20160115-00002).

10. A Statement of Whether the Applicants are Requesting Special Consideration because Either Party to the Transaction is Facing Imminent Business Failure, 47 C.F.R. § 63.04(a)(10)

The Applicants do not request special consideration and neither of the Applicants is facing imminent business failure.

11. Identification of any Separately Filed Waiver Requests Being Sought in Conjunction with the Transaction, 47 C.F.R. § 63.04(a)(11)

There are no separately filed waiver requests being sought in conjunction with the transaction.

12. A statement showing how grant of the application will serve the public interest, convenience and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets, 47 C.F.R. § 63.04(a)(12)

Partners Group has broad in-house knowledge and expertise in the telecommunications sector and insight into the entire telecommunications value chain through its infrastructure and private equity business, as well as its in-house dedicated TMT value creation team. Over the past 15 years, Partners Group has made approximately 20 investments in telecom, cable, and satellite sectors. Some examples of equity investment made by Partners Group during this period include Ziggo (cable provider in Netherlands), Sunrise (Switzerland telecom company) and Lightower (metro fiber network in the US). Beside equity investment, Partners Group also provides debt financing in these sectors such as Kabel Baden-Wuerttemberg (German cable company, prior to merger with Unitymedia), Numericable (cable operator and telecom services company in France) and Vizada (global satellite communications services provider). Recently, Partners Group invested in Atria Convergence Technologies (triple play service provider in India) and Seabras 1 (a new subsea fiber optic cable system directly connecting New York and Sao Paulo).

Under its new ownership Axia U.S. will benefit from Partners Group's experience investing in the communications sector, its global platform and its commitment to provide Axia U.S. with the expansion capital it needs to pursue its growth and continue improving the quality of its services. A grant of the instant Application will serve the public interest because, under the new ownership, Axia U.S. will continue to provide high quality telecommunications services, to its already existing customer base, which includes 120 communities, and enterprise, government, and small and medium-sized businesses in Western Massachusetts, and further expand its offerings to new customers. Granting this request for transfer of control of domestic Section 214 Authority will ensure continuity, allowing Axia U.S.'s customers to continue to receive reliable telecommunications services.

For the foregoing reasons, Applicants respectfully request the Commission promptly grant this Application.

Respectfully submitted,



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Attorneys for Digital Connection (Canada) Corp.

Dated: April 5, 2016

Exhibit A
Pre-Transaction Transferor and Licensee Corporate Structure

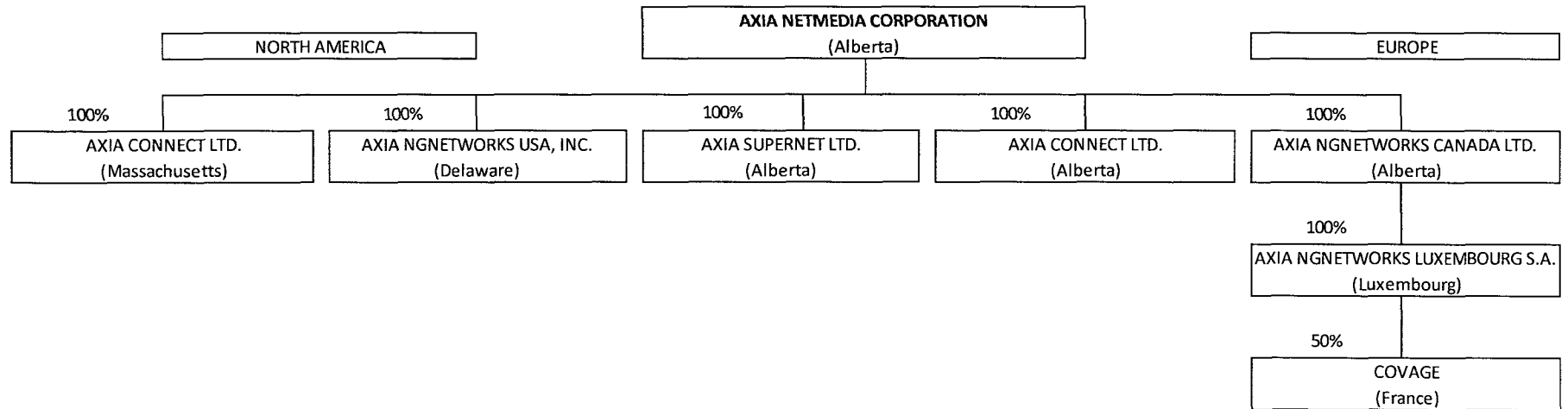
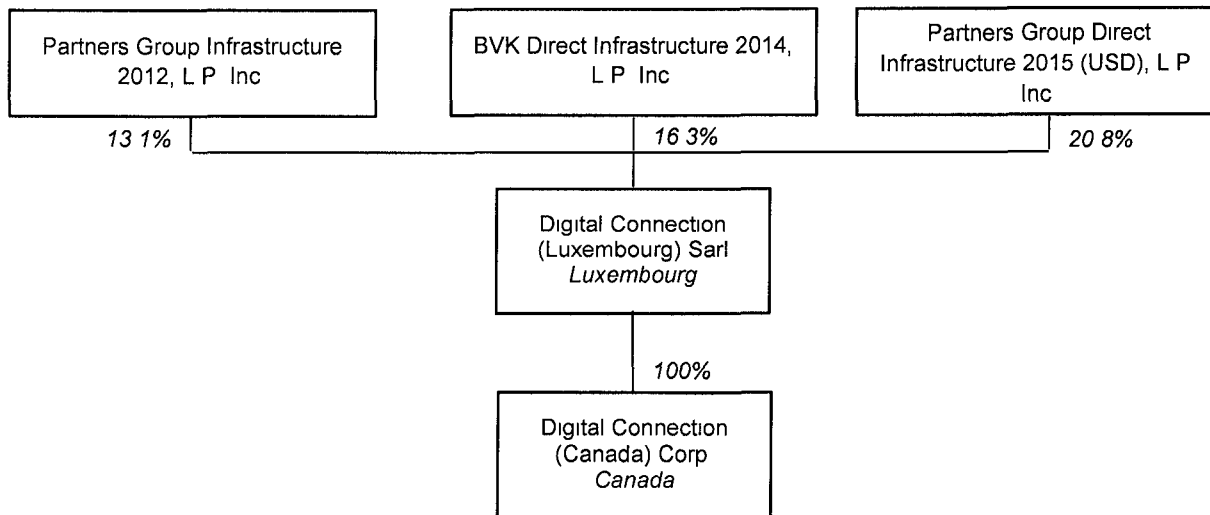


Exhibit B

Digital Connection (Canada) Corp.: Pre-transaction



Digital Connection (Canada) Corp.: Post-transaction

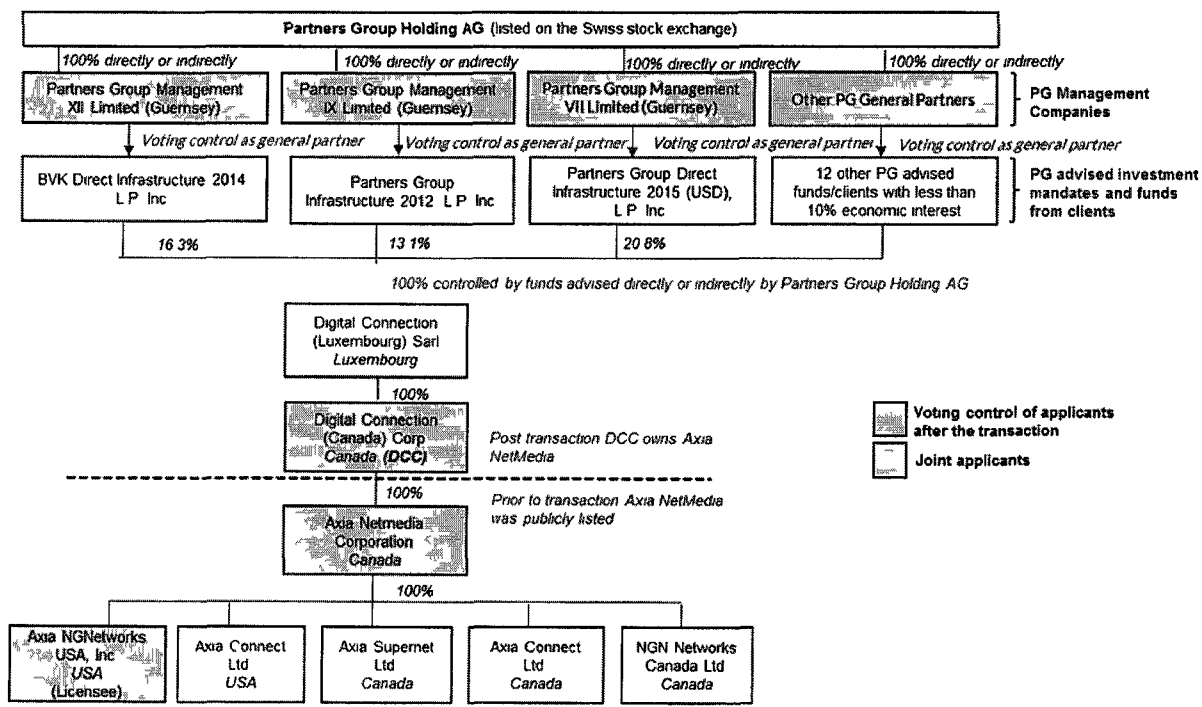


Exhibit B

April 28, 2016

VIA ELECTRONIC MAIL AND OVERNIGHT MAIL,
RETURN RECEIPT REQUESTED

Cameron Barrett
Axia NGNetworks USA, Inc.
c/o 3300, 450 - 1st Street SW
Calgary, AB Canada T2P 5H1

Subject: *MassBroadband 123* Fiber Optic Network (the "Project")
Dispute Resolution Notice -- MassTech and Axia Claims

Dear Cameron:

This will acknowledge receipt of your letter to Elizabeth Copeland of April 25, 2016 requesting the prior written consent of the Massachusetts Technology Park Corporation (MassTech"), pursuant to Section 8.1.4 of the *Master Agreement for Network Operator Services* (the "Agreement") between MassTech and Axia NGNetworks USA, Inc. ("Axia"), to an acquisition of Axia's parent company, Axia NetMedia Corporation ("Axia NetMedia"), by an affiliate of Partners Group Holding, A.G. ("Partners") which you have stated may constitute a change of control of Axia for purposes of Section 8.1.4 of the Agreement.

In order to respond to this request, MassTech needs some additional information concerning the affiliate of Partners (the "Affiliate") that is acquiring Axia NetMedia, specifically:

1. Whether and how, as part of the proposed acquisition, the assets of Axia NetMedia will be sufficiently preserved (a) to assure its ability to fully perform its obligations to MassTech under its existing Guaranty of the obligations of Axia under the Agreement, and (b) to assure its and Axia's continued ability to comply with the outstanding Preliminary Injunction and related Orders issued by the Massachusetts Superior Court against Axia in the civil action entitled *Massachusetts Technology Park Corporation d/b/a Massachusetts Technology Collaborative d/b/a Axia NGNetworks USA, Inc.*, Civil Action No. 14-2410-BLS 2;
2. Whether the Affiliate, or any entity that is a direct or indirect owner of 10% or more of the beneficial interest in the Affiliate, or is a direct or indirect owner of sufficient voting shares of the Affiliate to elect or control the election of the Board of Directors of Axia, is on a list of debarred or suspended entities for either the Commonwealth of Massachusetts or the United States Government, or is engaged in competition with MassTech's *MassBroadband 123* network;

Cameron Barrett
April 28, 2016
Page 2

3. Whether the Affiliate will agree to provide MassTech with quarterly and annual audited financial statements for itself, Axia NetMedia, and Axia during the term of the Agreement, given that Axia NetMedia would no longer be publicly traded;
4. Who the officers, directors, and shareholders of the Affiliate, Axia NetMedia, and Axia will be following the acquisition, and what other businesses the Affiliate owns, operates or controls, or will own, operate or control after the acquisition, and under what names the Affiliate owns, operates or controls such other businesses, or will do so after the acquisition; and
5. Whether, as a result of the proposed acquisition, the Affiliate will or is expected to ultimately have any direct ownership of the shares of Axia, and if so to what extent it will or is expected to have such direct ownership.

If you would kindly ask your legal counsel to contact our lawyer, Robert J. Kaler, Holland & Knight LLP, 10 St. James Avenue, Boston, MA 02116, Tel. 617-854-1443, he would be happy to go over these questions with your counsel, explain why this information is needed, and in general try to facilitate the process of our reviewing the information in time to make a decision consistent with your deadlines.

Thank you for your cooperation.

Very truly yours,

A handwritten signature in cursive script that reads "Michael Baldino".

Michael Baldino
Associate General Counsel, Massachusetts Technology Collaborative

Certificate of Service

I hereby certify that a true and correct copy of the
Foregoing Reply in Support of Massachusetts Technology Park
Corporation's Petition for Reconsideration was served
this 13th day of September, 2016, upon the following by First Class mail and Email:

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